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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,537	12/19/2003	Bruce Douglas Spangrud	OUTKC.0001P	5139

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EXAMINER
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COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/741,537	SPANGRUD, BRUCE DOUGLAS	
	Examiner	Art Unit	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15, 16 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 16, and 32-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed 6/5/2006 is acknowledged. By this amendment, applicant has amended claims 15, 32, 34, and 36 and the abstract and title.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15, 32, 34, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent DE 297 20 168 U1 ("DE '168") (previously cited).

Initially, it is noted that the disclose of this DE '168 in the prior Office action included an attached English abstract from Derwent. Additional translation of the German terms in this Office action have been provided from the website <http://babelfish.altavista.com> (accessed 8/23/2006). The terms translated from this website appear in *italics* in parenthesis in the paragraphs below.

DE '168 discloses in the description and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 15, 32, 34, 38, and 39. In particular, DE '168 shows a burner for a grill unit including a generally U-shaped burner conduit (see conduit formed by burner pipes 14, 15 (*brennerrohr*) and Fig. 1), the ignition pipe

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39 (*zunduberleitrohr*) connecting them). These burner pipes (14, 15) are considered the recited first and second legs spaced from one another and include a plurality apertures (42) (*offnung*). The burner further includes a central gas delivery conduit/gas supply pipe (16) (*gaszufuhrrohr*) defining first and second arms/gas feeder pipes (17) (*gasspeiserohr*) that connect the pair of legs/pipes (14, 15) to from a closed gas delivery path and deliver gas solely to the first and second legs as recited in applicant's claims 15 and 32.

In regard to the recitation that the burner conduit is generally "U" shaped (claims 15 and 32), as noted above the examiner considers that the shaped of the burner conduit shown in Fig. 2 of DE '168 is generally "U" shaped. Further, in regard to claims 32, through the connecting portion (ignition pipe 39) between pipes/legs (14, 15) is shown in Fig. 2 as being seemingly straight, the Derwent English abstract indicates that the vertical walls (44, 45) of this ignition pipe (39) form the "C, L, or U-shaped open-side ignition pipe" (see second paragraph of English abstract). Therefore, though not shown in Fig. 2 as being curved, the examiner considers that this teaching from the abstracts suggests that this ignition pipe may be curved in manner shown, for instance, in Fig. 3 of DE '168.

In regard to at least claim 34, central gas supply pipe (16) is shown to be perpendicular to the first and second arms/gas feeder pipes (17).

In regard to at last claim 38, the burner pipes/legs (14, 15) are shown having generally closed ends (19, see Fig. 2).

In regard to at least claim 39, the second end of the central gas delivery conduit (17) meets in a "T" junction with the pipe (16) forming the first and second arms. This junction is considered to form a closed end of the central conduit (17).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 297 20 168 U1 (“DE ‘168”) in view of U.S. Patent No. 6,176,173 to Holbrook et al. (“Holbrook”).

DE ‘168 discloses substantially all the limitations of claim 16 (note discussion of the teachings of this reference above with respect to claim 15 above) except for a diverter plate as described.

Holbrook teaches a burner in the same field of endeavor as both applicant’s invention and DE ‘168. In Holbrook, a U-shaped diverter plate (see Figs. 8 and 9) is arranged above a U-shaped burner conduit.

Therefore, in regard to claim 16, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner of DE ‘168 to incorporate the diverter plate of Holbrook as this plate desirably functions to provide even heat distribution and prevent flames from directly impinging upon food being cooked above the burner (see Holbrook, col. 6, lines 13-54).

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6. Claims 33, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 297 20 168 U1 (“DE ‘168”) in view of U.S. Patent no. 5,706,797 to Moore, Jr. et al. (“Moore”) (previously cited).

DE ‘168 discloses the invention substantially as described in claims 33, 40, and 41 (note discussion of the teachings of this reference above with respect claim 32) with the exception that the apertures in the first and second legs face one another or are located only in the legs and possibly that the burner conduits are generally circular in cross-section.

Moore teaches a burner assembly in the same field of endeavor as both applicant’s invention and DE ‘168. In particular, Moore shows a U-shaped burner conduit that (18) with first and second legs (see Fig. 5) having apertures (121 and 120) that face each other (see interior facing apertures 121 and 120, Fig. 5). Moore further shows that the burner conduits are circular in cross-section (see Fig. 6).

In regard to the limitation of claim 41 that the apertures are located only in the first and second legs, Moore clearly describes that the burner element includes burner ports along the interior “curve” portion of the U-shaped arrangement for the states purpose of providing a uniform temperature to an above located cooking rack (16) in a manner that requires less fuel (see Moore, col. 5, lines 40-44). Applicant’s invention is no concerned with providing a uniform temperature to a cooking rack in an arrangement that requires less fuel. It has been held that the omission of an element and its function is obvious if the function of the element is not desired. See MPEP 2144.04(II)(A). Accordingly, in this case, the omission of any flame holes in the connecting of portion between the burner legs would be obvious if the flame directing function of these holes to heat an above located cooking rack is not desired.

Therefore, in regard to claims 33, 40, and 41, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner assembly of DE '168 to incorporate apertures within the legs facing one another as taught in Moore as this arrangement allows flames to be directed downwardly from each leg to radiant material beneath the burner which in turn allows for uniform and efficient heating of this radiant material to thereby distribute heat to a food item to be cooked (see Moore, at least col. 5, lines 33-43 and col. 4, lines 28-44)). Further, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner assembly of DE '168 to incorporate the circular cross-section of the tubes/pipes as taught in Moore, as this shape is generally understood in the art as the shape of burner tubes/pipes and allows for the appropriate spacing of the flame apertures to direct the flames in a downward direction to desirably heat radiant material in the manner noted above.

7. Claim 35-37 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 297 20 168 U1 ("DE '168") in view of Moore as applied to claim 33 and further in view of U.S. Patent No. 6,176,173 to Holbrook et al. ("Holbrook").

DE '168 and Moore disclose substantially all the limitations of claims 35-37 (note discussion of the teachings of this reference above with respect to claim 33 above) except for a diverter plate as described.

Holbrook teaches a burner in the same field of endeavor as both applicant's invention and DE '168. In Holbrook, a U-shaped diverter plate (see Figs. 8 and 9) is arranged above a U-shaped burner conduit.

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Therefore, in regard to claim 35-37, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner of DE '168 to incorporate the diverter plate of Holbrook as this plate desirably functions to provide even heat distribution and prevent flames from directly impinging upon food being cooked above the burner (see Holbrook, col. 6, lines 13-54).

### *Response to Arguments*

8. Applicant's arguments with respect to claims 15, 16, and 32-41 have been considered but are moot in view of the new ground(s) of rejection.

The prior rejections to the claims that were presented in the prior Office action mailed 12/2/2005 were based, at least in part, on German Patent DE 42 13 197 to Polzer ("Polzer"). An English translation of this German document to Polzer has been obtained from the translations services offered by the Scientific and Technical Information Center (STIC) at the USPTO and is made of record in this Office action. However, in light of applicant's amendment and arguments submitted 6/5/2006, the rejections of the claims based on the German reference to Polzer have been withdrawn.

### *Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR


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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc  
August 28, 2006

  
JOSIAH COCKS  
PRIMARY EXAMINER  
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